(1)

Supreme Court, U.S.
FILED

941710 APR 17 1995

OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

VERNON DALE ELLIS, JR.

Petitioner,

vs.

KELLY Z. SENNHOLZ,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

DALE ELLIS - OBA #12280
603 Expressway Tower
2431 E. 51st Street
Tulsa, OK 74105-6033
(918) 749-5566

QUESTIONS PRESENTED FOR REVIEW

1. Can a state court deny litigants accused under domestic abuse statutes fundamental rights of due process by denying them a trial by jury, pretrial discovery and procedure and by applying a different burden of proof to those accused under these laws than other litigants similarly situated?

2. When a court construes a statute allowing injunctive relief in such a manner that an injunction is granted, even in the absence of the harm complained of, and where a statute by design becomes so restrictive that it can subject an accused to criminal penalties for behavior that would not otherwise be construed criminal activity, does the statute become penal in nature?

3. If the state court's application of said statute is penal in nature, then should the accused be afforded fundamental due process including trial by jury, discovery and pr[illegible]rial procedures, and should the same burden of proof applicable in criminal actions be applied with regard to persons accused under these statutes?

4. Even in situations where an action is brought by private litigants, does the state court's application of the statute denying the accused fundamental rights as given to other litigants similarly situated create a class of persons who are denied equal protection violative of the 14th Amendment to the Constitution of the United States?

5. Does the exclusion of an accused from his real and personal property pursuant to a statute constitute a taking in violation of constitutional protection of both substantive and procedural due process of law?

LIST OF PARTIES

The parties to this action are Vernon D. Ellis as petitioner and Kelly Z. Sennholz as respondent. Pursuant to the Rules of the Supreme Court however, because the constitutionality of a statute and the court's application thereof are questioned, the State of Oklahoma has been given proper notice. 28 U.S.C. § 2403(b) may be applicable and notice is served to the Attorney General of the State of Oklahoma.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 7

1. The court in application of the statute involved denied Mr. Ellis fundamental procedural due process of law. 7

2. The court, by its application of the law and the statute on its face denied the petitioner equal protection of the law. 18

3. The Penal Nature of the Statute 22

CONCLUSION 25

APPENDIX . . . . . A

TABLE OF AUTHORITIES

Cases:

Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S.Ct. 555 (1977) 21

Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760 22

Burton v. Willmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856 (1961) 19

Cross v. City of Lawton, 31 Okl. 49, 119 P. 625 (1912) 14

Evans v. Newton, 382 U.S. 296, 86 S.Ct. 486 (1966) 18

Gilmore v. Montgomery, 417 U.S. 556, 94 S.Ct. 2416 (1974) 19

Logan v. Zimmerman Brush Company, 455 U.S. 422, 102 S.Ct. 1148, (1982) 16

Marquette v. Marquette, 686 P.2d 990 (Okla. App. 1984) 8

Moose Lodge v. Ervis, 407 U.S. 163, 92 S.Ct. 1965 (1972) 18

Penn Central Transp. Co. v. New York, 438 U.S. 104 98 S.Ct. 2646(1978) 25

Roy Realty and Developing, Inc. and Charles D. Roy v. Southern Seismic and TXO Production Co., Inc., 711 P.2d 946 (Okla. App. 1985) 14

Shelley v. Kramer, 334 U.S. 1, 68 S.Ct. 836 (1948) 21

Specht v. Patterson, 386 U.S. 605, 87 S.Ct. 1209 (1967) 23

Walcott v Dennes, 29 Okl. 228, 116 P. 784 (1911) 14

Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886) 21

United States Statutes:

18 U.S.C. 922(d)(8)(a)(B)(i)(ii) 10

28 U.S.C. §1257 (a) 3

United States Constitution:

The Fourteenth Amendment 3

Oklahoma Statutes:

12 O.S. 2001 10

12 O.S. 2002 10

12 O.S. 3225 10

12 O.S. Ch. 2. App. 1. 12

12 O.S. § 2404 12

22 O.S. 60.1 2

22 O.S. 60.4(h) 24

22 O.S. 60.5 23

22 O.S. 60.6 20

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

VERNON DALE ELLIS, JR.
Petitioner,

vs.

KELLY Z. SENNHOLZ,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Petitioner, Vernon D. Ellis, Jr., respectfully requests that a writ of certiorari issue to review the opinion of the Court of Appeals of the State of Oklahoma entered on November 1, 1994, sustaining an order of the district court of Tulsa County, Oklahoma entered on May 7, 1993 and the order of the Supreme Court of the State of Oklahoma entered on January 18, 1995 denying certiorari to the court of appeals decision.

OPINIONS BELOW

The protective order entered by the District Court in and for Tulsa County, State of Oklahoma, entered on the 7th day of May, 1993 is reprinted at the appendix hereto, p. 1.

The order issued by the Court of Appeals, Tulsa Division for the State of Oklahoma, upholding the protective order is reprinted in the appendix hereto, p. 4.

The order of the Supreme Court in and for the State of Oklahoma denying the subsequent Petition for Writ of Certiorari entered on the 18th day of January, 1995, is reprinted in the appendix hereto, p. 12.

JURISDICTION

On November 1, 1994, the Oklahoma Court of Appeals, Tulsa Division, issued an opinion upholding a protective order pursuant to 22 O.S. 60.1, et. seq. The Supreme Court for the State of Oklahoma denied Mr. Ellis' Petition for a Writ of Certiorari on the grounds of equal protection, due process and jurisdiction on the 18th day of January, 1995.

The jurisdiction of the court to review the opinion of the Oklahoma Court of Appeals and the subsequent denial of the Petition for Writ of Certiorari by the Supreme Court of Oklahoma is evoked under 28 U.S.C. §1257 (a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fourteenth Amendment to the constitution of the United States.

STATEMENT OF THE CASE

On January 14, 1993, Mr. Ellis, your petitioner, a local attorney in Tulsa, Oklahoma, was surprised to learn that his girlfriend with whom he had recently purchased a home, had obtained an emergency ex-parte protective order.

Mr. Ellis voluntarily accepted service of the order and was immediately ordered to remove himself from the home he purchased jointly with the respondent. Mr. Ellis was removed from his home for a period of nearly eight months until respondent

eventually abandoned same. Ultimately, another court granted Mr. Ellis possession of the home pursuant to a partition action he was forced to file to retrieve either possession or his equity in the property.

Respondent made allegations of abusive behavior which she alleged to have occurred on the previous morning. Your petitioner, at that time, as today, denies the accusations of the respondent.

The Oklahoma Statute involved requires that a hearing on the issues be held within ten days. Mr. Ellis agreed to waive the ten-day hearing, allow the temporary order to remain in effect and requested that he be allowed to participate in discovery, pretrial process and procedure and further requested that he be allowed a trial by jury. Also, pursuant to the Oklahoma discovery code, Mr. Ellis presented evidence that a mental examination of the accuser was important to his defense.

All of Mr. Ellis' requests and the waiver were denied by the court. Because the tenth day fell on a weekend, on the eleventh day, trial began. Because of a crowded docket, the court

was unable to grant consecutive trial dates. The trial was held in a protracted manner with days of trial scattered periodically sometimes with weeks and on occasion, in excess of one month between trial dates. All of this time, Mr. Ellis continued to request that he be allowed to participate in discovery including written interrogatories, request for production of documents, depositions and the statutorily allowed mental examination.

Finally, after two days of trial had been completed, the court allowed your petitioner to take the deposition of the respondent and participate in limited written discovery. However, the court continued to deny a mental examination, even despite evidence presented by an independent psychiatrist that the request was necessary to assess the "reasonableness" of her fears.

Further, although the defendant, through his attorney, on on essentially a "self-help" basis filed various pleadings with the trial court, the court did not observe Oklahoma Rules of Civil Procedure and Practice. A scheduling order was not entered, no pretrial conference was held and the issues and witnesses in the case changed on a day-to-day basis without notice to the defendant.

Although the Oklahoma Court holds this to be a case of injunctive relief and requires the burden of proof to be by clear and convincing evidence, the district court ruled that the respondent's burden of proof was to be "preponderance of the evidence." The district court entered a protective order against the defendant for acts on the morning in question despite its finding that he had never injured the respondent, did not injure the respondent on this particular occasion, and that serious and most egregious portions of the respondent's allegations were untrue. Finally, and most importantly, even under the lesser burden of proof, the court could not make a finding that there was danger of ongoing abuse or threats, could find no evidence of harassment, stalking or any of the acts the statute is meant to protect.

Although not found in the record, it is important for this court to note that local media, judges and police in Tulsa, Oklahoma have often and publicly endorsed the statute in question. One assistant district attorney running for office as a district judge used a newspaper article upholding an appellate court's decision with regard to a similar stalking law as an advertisement in his

campaign. Interestingly enough, the Court of Appeals decision appended herein was filed on November 1, shortly before the election. Although none of the judges in this particular case were up for reaffirmation in the general election to be held at that time, the judges of the Oklahoma appellate courts must receive a majority of those voting to be retained in their respective positions. Recently, in Oklahoma, judge's voting records have become important issues in their respective campaigns. Judges' decisions with regard to these cases often, as in this instance, attract media attention and pressure is placed upon judges to enter the order and treat the accused as harshly as possible.

REASONS FOR GRANTING THE WRIT

1. The court in application of the statute involved denied Mr. Ellis fundamental procedural due process of law.

It is important to note here, that a factual dispute has existed between the parties from the day this action was first filed until present. The respondent has essentially argued that your petitioner is such a "bad" person, that the court should not listen

to his arguments. Unfortunately, this type of emotional appeal worked with the Oklahoma Appellate Court. Encouraged by the popular political climate, the Appellate Court in its opinion chastised your petitioner for defending himself and criticized him for daring to file an appeal. It appears the appellate court was more concerned with speed and holding court "without lawyers" than it was with analyzing constitutional concerns at issue.

Mr. Ellis does not ask this court to make a factual determination as to the events of January 13, 1993. The petitioner does ask this court, however, to require the State of Oklahoma to provide a forum where he can effectively defend himself against false accusations.

The results oriented nature of the statute in question, has literally created a situation where the accused are deemed guilty until they prove themselves to be innocent.

22 O.S. 60.1 et seq. is found within the Rules of Criminal Procedure in and for the State of Oklahoma. However, the court in Marquette v. Marquette, 686 P.2d 990 (Okla. App. 1984)., held that the action is in fact a civil suit for injunctive relief. This is

only the first inconsistency. The statute specifically excludes the property rights of the individuals involved, from the court's jurisdiction.[1] However it gives the court the ability to interfere with and take away the most precious and guarded property right of any, the right to the peaceful use and enjoyment of one's own home.

The statute on its face might appear to be civil in nature. However, as the Oklahoma Court has construed the statute, its application is in fact penal. For instance, in this particular matter, the trial court specifically found that the complaining party had never at any time, even on the date in question, been injured by your petitioner. Further, the court went on to find that even under the lowest burden of proof available, it could not find danger of ongoing abuse or threats. The court found no evidence of harassment or stalking, yet a life-long protective order was entered against Mr. Ellis. If the trial court specifically finds that there is no danger of the acts complained of, then what is being enjoined?! The obvious answer, is the statute is being used to punish the

---

[1] 22 O.S. 60.4(H).

accused. In fact, the federal legislature has classified those against whom protective orders have been entered in the same category as convicted felons. In what is known commonly as the "Brady Bill", 18 U.S.C. 922(d)(8)(a)(B)(i)(ii)., those against whom a protective order has been entered are prohibited from purchasing handguns.

The statute is actually quasi civil and quasi criminal. . Unfortunately, those accused under this statute however, are not given the due process rights of either.

If in fact this is a civil action, the court should have allowed Mr. Ellis to participate in discovery as are all other civil litigants. 12 O.S. 2002 provides there shall be one form of action known as "civil". 12 O.S. 2001 provides that the rules of civil procedure shall apply to all civil actions except those that provide a different procedure. 12 O.S. 3225 indicates that "the discovery code shall be liberally construed to provide just, speedy and inexpensive determination of every action." The statute in question does not exclude the use of the discovery code or the rules of civil procedure. It only requires that a hearing be held in ten (10) days.

The only logical conclusion that can be reached with regard to the ten-day rule is that those persons accused in an ex-parte fashion, should be entitled to some sort of immediate relief. However, when, as here, the accused agrees to waive the ten-day hearing and to allow the relief requested to remain in effect during the pendency of the action, there is no rational basis for denying the accused pretrial discovery and procedure. Since the ex parte order would in fact remain in effect, what would be the harm to allow an accused to prepare his defense? To deny one these rights forces them to trial without adequate preparation where the issues are contested.

The accused was denied the right to take the plaintiff's deposition until two full days of trial had passed.[2] He was not allowed to participate in written discovery requests[3] until long after trial began except that the accuser was required to give a witness list before the ten-day hearing. Although Mr. Ellis presented

---

[2]Depositions may be taken pursuant to 12 O.S. 3230.

[3] Written requests for production of documents and, interrogatories are allowed in 12 O.S. 3233 and 3234.

evidence that a mental examination of the plaintiff was necessary, it was not allowed.[4]

There was no pretrial conference as required in Rule 5 of the Rules of the District Courts of the State of Oklahoma, 12 O.S. Ch. 2. App. 1. During the trial, the court allowed the accuser to to change and add new issues and accusations almost daily. Mr. Ellis often learned of new accusations and witnesses after the trial began or actually during trial.

In strict derogation of 12 O.S. § 2404, the court allowed character evidence in an attempt to prove to the court the "profile" of an abusive person. The psychologist hired by respondent to testify never examined Mr. Ellis and spoke generally to profile. Can the court imagine in a criminal case or a civil case allowing a psychologist to testify that "all young black men who are unemployed and have access to a nighttime convenience store are most likely to commit armed robbery, and therefore the court should be extremely suspicious of the accused."? That is exactly what happened here. The court allowed the psychologist to testify

---

[4]Mental examinations are provided in 12 O.S. 3235.

as to character traits that would most likely be found in an abusive personality. The respondent (through her attorney) was allowed to put on evidence that "this" is the profile of an abuser and "these" are his personality traits, therefore he must be guilty. Interestingly enough, the court indicated in its Findings of Fact, that the accused in some ways fit the "profile" and in some ways did not.

Indeed, the court keyed into one particular item of testimony put forth by the psychologist as grounds for its decision to grant the order.

The psychologist testified that the typical abuser denies guilt or culpability. The court took this one fact and used Mr. Ellis' denial of the allegations as evidence against him! Using evidence in such a manner could not be more violative of an accused's right to a fair and impartial trial. This catch-22 situation puts a defendant in an impossible spot. If he denies his culpability he must be guilty. The only other alternative, of course, is to admit guilt and therefore be found guilty. Using this application, only one result can be acheived at trial.

Another important point of error involves burden of proof. If in fact, this is a matter for injunctive relief as the appellate court in Oklahoma has held, then the applicable rule regarding the granting of an injunction is as follows:

> The right to injunction must be established with certainty, and the evidence must be clear, convincing, and satisfactory. A mere fear, apprehension or possibility that injury may result is insufficient. An injunction should be denied where the evidence is such to even doubt the existence of any fact to authorize the issue of such an injunction." Roy Realty and Developing, Inc. and Charles D. Roy v. Southern Seismic and TXO Production Co., Inc., 711 P.2d 946 (Okla. App. 1985), at 949.

> "Under our procedure, the exclusive function of a writ of injunction is to afford only preventative relief; it is powerless to correct wrongs or injuries already committed." Cross v. City of Lawton, 31 Okl. 49, 119 P. 625 (1912); Walcott v Dennes, 29 Okl. 228, 116 P. 784 (1911).

All other litigants in Oklahoma, in order to be granted injunctive relief against another party, must show by clear and convincing evidence that there is an ongoing threat or danger of the action alleged. In fact, merely showing evidence of a past occurrence is specifically held to be insufficient. There must be a showing of future danger and harm. The trial court in this particular instance

violated both these rules. It used the "preponderance of the evidence standard" rather than the clear and convincing rule as set forth in its own holding. Also in derogation of its own case, used an isolated past act as the reason for future relief. Remember, your petitioner denies any past act, but even if it were committed, in the absence of any finding of ongoing danger, under Oklahoma law, entry of injunctive relief would be improper. The appellate court applied no test to this obvious violation of due process. It simply stated that the lower burden of proof seemed appropriate in this particular instance and that evidence of one past act is sufficient to grant a permanent injunction. There was no test of strict scrutiny, there was no test of rational relationship, the court simply decided a result and fashioned its opinion to support the result.

The petitioner does not argue that it was a violation of due process to bring this action, however, he does argue that the court's treatment of him in litigation arbitrarily denied the right to use judicial procedures as given to all other litigants. Such a process is invalid even under the most minimal due process or

equal protection standards, Logan v. Zimmerman Brush Company, 455 U.S. 422, 102 S.Ct. 1148, (1982).

The ultimate result of the court's application of the statute was to effectively deny your petitioner access to its courts.

If in fact, this is a civil action for injunctive relief, then the same discovery and pretrial procedure rules should be used for all other persons involved in civil proceedings within the state. Further, the same burden of proof should apply. Accusers should be required to meet that burden of proof rather than the opposite, which has occurred here.

Finally, another basic fundamental right of procedural due process is that litigants be given an impartial trier of fact.

Although, it is impossible to place such a thing in the record, the political climate in Oklahoma, has made it impossible for accused in such matters to be granted an impartial trial in a non-jury setting.

Because of the elected nature of most judges in Oklahoma, and because of public pressure with regard to these issues, it has become impossible for those judges to be non-biased. In fact, and

admittedly not in the record, one of the judges in the same courthouse during the pendency of this action, told the attorney for the petitioner that under the current political climate, judges are almost universally forced to grant protective orders. The judge went on to explain that if a judge fails to grant a protective order and something later happens to the complainant, the judge's career or reputation could be damaged.

The only way to support such a proposition is merely by reviewing the decision of the appellate court and the trial court.

It is evident that at every turn, the accused was denied procedural requests with regard to discovery, pretrial procedure and even procedure regarding the evidence code. The appellate court even questioned your petitioner's right to contest the order. For instance, in its opinion on page 2, the court stated "defendant, for reasons not clearly set forth in the record, decided to contest the issuance of a final protective order against him." The court went on to speak of the length of the trial. It is obvious that the court was only concerned with its own inconvenience and even questioned Mr. Ellis' right to an appeal.

Despite the opinions espoused by the appellate court, Mr. Ellis has always been clear in his position. He did not do the act alleged and he was not given procedural due process rights with which to defend himself properly and was thereby denied effective access to the court and to the judicial system.

2. The Court by its application of the law and the statute on its face denied the petitioner equal protection of the law.

The petitioner admits for the purposes of equal protection, this action was brought by an individual party. However, he asserts that the act itself is intertwined with governmental interest and the denial of equal protection actually stemmed from the action of the court in its application of the statute. This statute constitutes either direct government activity or at least a particular interest so intertwined with private interest that it may be treated as government action, as supported in Evans v. Newton, 382 U.S. 296, 86 S.Ct. 486 (1966)., Moose Lodge v. Ervis, 407 U.S. 163, 92 S.Ct. 1965 (1972).

Moreover, because there is no precise formula for such a determination, the facts of each particular case must be weighed and sifted thoroughly before reaching such an automatic conclusion. Burton v. Willmington Parking Authority, 365 U.S. 715, 81 S.Ct. 856 (1961); Gilmore v. Montgomery, 417 U.S. 556, 94 S.Ct. 2416 (1974). It is important to note, that petitioner herein is not asking for particular rights or privileges with regard to the accuser. The petitioner does, however, ask that the State of Oklahoma by way of its legislative body and courts, be prohibited from singling out a particular class of litigants and subjecting them to a different, less protective set of rules and procedures than others similarly situated.

For instance, it was obvious in this particular case, that a criminal court could not have convicted your petitioner of even the most simple charge of assault or battery. There was no injury, there was no evidence of past injury, no objective or circumstantial evidence of abuse, nothing, except unsupported allegations insufficient to convict the Mr. Ellis of even the most simple misdemeanor.

Yet the courts and the legislature have devised a way to ignore the procedural safeguards afforded criminal defendants. For example, the court can enter a protective order, without discovery or pretrial procedure and on the basis of only a finding that under a preponderance of the evidence one act of threatening behavior may have, in the past, occurred, without a finding of any future danger.

Once this is done, the court is free to remove the accused from his home. From that point forward, many acts this person could commit which would otherwise not be criminal in nature, become criminal acts.

For example, a person under a protective order can not return to his own home to retrieve mail, personal belongings or even mow the lawn or feed his dogs. If he were to do so, even when the alleged victim was not present, he could then be convicted of committing the crime of violating a protective order pursuant to 22 O.S. 60.6, which is punishable by a substantial fine and up to one year in prison. This statute creates a class of people for whom otherwise acceptable behavior nonpunishable by law,

becomes criminal in nature.

Not only does the statute itself through legislative enactment allow the government to obviate fundamental procedural safeguards, the court's activities and construction of the statute denying fundamental procedural safeguards is also considered an action of the state and can therefore be considered under an equal protection argument as supported by Shelley v. Kramer, 334 U.S. 1, 68 S.Ct. 836 (1948).

There are essentially two different ways that the court can find that a class exists in this particular instance. The first is by way of gender. While it is admittedly unusual for a gender classification to be submitted towards men, the obvious classification of being a male does fall within a suspect category.

While the statute itself is gender neutral on its face, the court is free to look beyond the statute to determine how the statute is actively applied. Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S.Ct. 555 (1977), Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886). If this is in fact a gender based classification, then the test of strict

scrutiny must be applied.

The other possibility is simply by singling out one particular group of litigants charged under one particular statute, in and of itself creates a class for the purpose of equal protection. The government has created a class of persons known as "abusers". The court has recognized other such classifications with regard to those complained to be "mentally ill" as found in Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760.

There is little question that this class of people whether it be based on gender or otherwise, has been singled out to be treated differently than other persons. Given the extensive nature and use of these statutes across the United States, it is important that the court review this issue.

3. The Penal Nature of the Statute

The statute is criminal in nature because it is designed at retribution. The state has allowed a civil litigant to convict the accused of assault and battery with no procedural or substantive safeguards. Although the end result does not initially send the

accused to jail, the relief granted is penal. Courts have previously held, that despite the civil nature of proceedings on their face, the act is the same and the ultimate consequence of being deprived of liberty requires that those persons be accorded the protections of due process. Specht v. Patterson, 386 U.S. 605, 87 S.Ct. 1209 (1967). While the defendant was not jailed, he was removed from his home, placed on a government list[5] which prevents, among other things, him from purchasing a hand gun pursuant to the "Brady Bill" supra. and is now subjected to criminal prosecution for acts which would not otherwise be criminal in nature. It is difficult to understand how the statute can be injunctive in nature when the trial court specifically could not make a finding under the lowest burden of proof that the alleged victim, was in any danger of the acts the statute is meant to protect. Since the court can not made the requisite finding necessary to justify the entry of the lifelong protective order, the only possible remaining conclusion is that such an application of the statute can be only for the purpose of retribution or punishment.

---

[5] 22 O.S. 60.5

As such, the defendant in this matter is clearly entitled to the fundamental procedural due process rights, including a jury trial as those in similar criminal proceedings.

DOES THE EXCLUSION OF THE ACCUSED FROM HIS PROPERTY CONSTITUTE A TAKING?

In the instant case, the court ultimately excluded the defendant from his own property in favor of the accuser. The petitioner herein eventually reclaimed his property only after the respondent abandoned it. A partition action was filed but was not ultimately granted until nearly a year after the original action for protective order was filed. 22 O.S. 60.4(h) indicates that "no order shall in any manner effect title of real property or otherwise purport to determine the issues between the parties as to division of property or any other like relief. . . " Yet the statute ignores that there is more to property interest than simply title to property.

Taking of property does not necessarily relate to taking of title. The government, is not free to transfer property rights from one owner to another or to take or use private property for the public good unless the action is justified by emergency conditions

or unless compensation is paid. A permanent physical occupation of private property by the government or government regulation which allows someone other than the property owner to have permanent physical occupation of a definable part of a piece of property does constitute a taking. Penn Central Transp. Co. v. New York, 438 U.S. 104, 115-16, 139, 98 S.Ct. 2646, 2654-55, 2666-67 (1978).

Here, looking solely at the statute in question, the court excluded your petitioner from his property permanently in favor of his accuser. The court here gave property rights, which fall within the definition of a taking, from one owner to another with no provision for compensation in a non-emergency condition. Therefore, as the court specifically could not find any evidence of danger to other persons, its order constituted a taking in violation if the substantive due process rights guaranteed in the Fourteenth Amendment to the Constitution.

CONCLUSION

In conclusion, your petitioner wishes to make it clear that

he supports the idea of protecting persons from domestic abuse. However, the Constitution by way of due process and equal protection clauses, protects the accused and allows them to defend themselves from their accusers. Roughly forty-eight (48) states in their rush to stop domestic violence have enacted similar statutes. In Tulsa County, Oklahoma, alone several hundred applications for protective orders are granted each month. Multiply this by the number of cities in the forty-eight (48) states, and the number of persons directly involved in these types of proceedings is staggering.

Here, the statute in question being quasi criminal and quasi civil in nature has been construed by the Oklahoma court so that neither fundamental civil procedural due process rights nor fundamental criminal procedural due process rights apply to the accused.

The statute on its face is results oriented. It was purposefully designed to afford the easiest and quickest relief sought by the complaining party. The Oklahoma Appellate Court intimates in its opinion that the statute was designed for speedy use

without the interference of attorneys. In doing so, the State and the Court has created a situation where an accused can be adjudicated "guilty" in the absence of any finding of ongoing danger, can be excluded from his or her home permanently, is placed on a black list of abusive persons and is classified in a group with those adjudicated to be felons or mentally ill persons.

These are very serious consequences to the accused yet the appellate court calls the defense by your petitioner "an unnecessary escalation of the proceedings" and seems to chastise your petitioner for appealing the protective order despite the fact that it continues to remain in full force and effect against him.

In the absence of any finding of any ongoing danger, there can be no rational basis for the entry of a permanent protective order even under the most minimal standards.

Thereby, the statute as construed is wholly penal and acts that would otherwise not be criminal in nature can be construed to subject the accused to substantial fines and imprisonment.

The Appellate Court of the State of Oklahoma would have this court to believe that by finally allowing the accused to take his

accuser's deposition after two complete days of trial were held, is consistent with fundamental procedural due process. However, neither the court nor the respondent can show any instance where discovery is first allowed after a trial has already begun. Oklahoma law requires that all civil proceedings have a pretrial. This was not done. Even if the governmental interest expressed in encouraging a speedy trial is the stated goal, Mr. Ellis' waiver of that speedy trial and agreement that the temporary order could remain in effect during the pendency of the proceedings obviated the necessity for the governmental interest sought. Your petitioner was willing to trade the speedy trial for access to the fundamental procedural rights guaranteed by the Fourteenth Amendment. Yet, the court refused to allow same.

It is unknown to your petitioner whether the court will ultimately determine this to be a civil or a criminal action. Arguments exist for both. However, under either standard, the accused, whether gender based, requiring strict scrutiny or otherwise requiring the lesser test, was treated differently than others similarly situated, under either scenario by the State and its

courts. He was put in a classification of persons unable to defend themselves against false accusations. He was taken from his home without procedural or substantive due process and is now branded for life as an abuser and listed on the public rolls within the police department and prohibited from purchasing firearms.

The courts of Oklahoma have clearly been swayed by the media and political concerns. The courts and judges have truly become afraid to deny protective orders because of future political ramifications.

This results-oriented statute and its application, clearly create a situation where an accused is presumed guilty and then strips the accused of any vehicle to defend themselves. Because of the egregious nature of the state in this matter and the widespread and increasing use and because of the court's unwillingness to deal with this issue fairly and pursuant to the law, it is essential that this court grant certiorari.

Respectfully submitted,

By_____
DALE ELLIS - OBA # 12280
603 Expressway Tower
2431 East 51st Street
Tulsa, Oklahoma 74105-6033
(918) 749-5566

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

VERNON DALE ELLIS, JR.

Petitioner,

vs.

KELLY Z. SENNHOLZ,

Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF OKLAHOMA

DALE ELLIS - OBA #12280
603 Expressway Tower
2431 E. 51st Street
Tulsa, OK 74105-6033
(918) 749-5566

TABLE OF CONTENTS

Decision of the District Court In and For Tulsa County, State of Oklahoma. 1

Decision of the Court of Appeals, Division 2, State of Oklahoma 4

Decision of the Supreme Court of the State of Oklahoma 12

Okla. Stat. tit. 22, § 60.1. 13

Okla. Stat. tit. 22, § 60.4. 14

Okla. Stat. tit. 22, § 60.5. 17

Okla. Stat. tit. 22, § 60.6. 18

Okla. Stat. tit. 12, § 2001. 20

Okla. Stat. tit. 12, § 2002. 21

Okla. Stat. tit. 12, § 2404. 21

Okla. Stat. tit. 12, § 3225. 23

Okla. Stat. tit. 12, § 3230. 23

Okla. Stat. tit. 12, § 3233. 24

Okla. Stat. tit. 12, § 3234. 26

Okla. Stat. tit. 12, § 3235. 28

Okla. Stat. tit. 12, § Ch. 2, App.1 Rule 5 32

18 U.S.C. § 922 33

28 U.S.C. § 1257(a) 34

United States Constitution
Amendment XIV. 35

IN THE DISTRICT COURT OF TULSA COUNTY,
STATE OF OKLAHOMA

KELLY Z. SENNHOLZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. FD-93-0284
	)	
VERNON DALE ELLIS,	)	
	)	
Defendant.		

PROTECTIVE ORDER

NOW ON THIS 7th day of May, 1993, the above titled and numbered cause comes on for hearing before the Honorable Special Judge of the District Court in and for Tulsa County, State of Oklahoma, pursuant to regular trial setting thereof. The Plaintiff appears in person with Counsel. The Defendant, having been duly served with a copy of petition, notice of hearing, copy of ex parte Order, appears in persor. with Counsel. Witnesses were sworn, testimony was taken.

THE COURT FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT THAT:

The victim(s) requiring protection are: Plaintiff, Kelly Z.

Sennholz. Defendant and the victim(s) are family or household members as defined by law; Defendant has caused or attempted to cause serious harm, or has threatened victim(s) with imminent serious physical harm. A Protective Order is necessary to bring about cessation of domestic abuse against the victim(s).

__x__ Defendant ordered not to abuse or injure the victim(s).

__x__ Defendant ordered not to visit with, assault, molest, harass, otherwise interfere with the victim(s) wherever they may be, to include but not to be limited to home, school, or place of employment.

__x__ Defendant ordered not to threaten the victim(s).

__x__ Defendant ordered to remain away from the victim(s) and the residence of the victim(s) wherever it may be.

____ Defendant ordered to immediately leave the residence located at _____ permanently or _____.

____ The parties may communicate to facilitate visitation with minor children.

____ Other_____

__x__ Defendant is ordered to pay all costs of the action.

____ Plaintiff is ordered to pay _____ costs of the action.

____ Defendant is ordered to cease stalking victim.

____ Defendant is ordered to cease harassment of the victim.

You, the Defendant, are further informed that pursuant to Title 22, Sec. 60.0, any violation of this Order is punishable by up to One (1) year in the County Jail and/or a fine of up to One Thousand Dollars ($1,000.00). A violation of this Order resulting in physical injury or physical impairment is punishable by imprisonment for not less than Ten (10) days nor more than One (1) year in the County Jail and a fine not to exceed Five Thousand Dollars ($5,000.00). A second conviction of a violation of the Protective order is punishable by not less than Ten (10) days and not more than One (1) year in the County Jail and/or a fine not less than Five Hundred Dollars ($500.00) or not more than Five Thousand Dollars ($5,000.00).

EDWARD J. HICKS
Judge of the District Court

FILED NOV. 1, 1994

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

KELLY Z. SENNHOLZ,	)	
	)	
Appellee,	)	
	)	
vs.	)	No. 81,706
	)	NOT FOR PUBLICATION
VERNON DALE ELLIS, JR.,	)	
	)	
Appellant.	)	

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

Honorable Edward Hicks, III, Trial Judge

Joel L. Wohlgemuth
William K. Osmond
Norman & Wohlgemuth
Tulsa, Oklahoma — For Appellee

Dale Ellis
Knowles, King, & Smith, P.C.
Tulsa, Oklahoma — For Appellant

SUMMARY OPINION

RAPP, J.

Trial court defendant, Vernon Dale Ellis, Jr., appeals the entry of a protective order against him in a domestic abuse actions initiated by plaintiff, Kelly Z. Sennholz.

The records establishes the defendant became physically abusive to the plaintiff after being awakened early in the morning in the house the parties jointly owned and were living in together.

Plaintiff filed for a protective order the following day, January 14, 1993, and in accord with 22 O.S. Supp. 1993, §60.4, a hearing was to occur within ten days. Defendant, for reasons not clearly set forth in the record, decided to contest the issuance of a final protective order against him. His defense consisted of various motions and discovery requests which, the trial court observed, resulted in probably the longest such hearing in Tulsa County. The end result, following an unnecessary escalation of the proceedings, was the issuance of the final protective order and allocation of attorney fees for plaintiff against defendant. Defendant appeals.

We first note that the Act, 22 O.S. 1991 § 60-60.7, recognizes a governmental interest in the protection of domestic abuse victims and is designed to provide speedy, efficient and effective relief to plaintiffs in matters of domestic abuse. Its procedures are simple, designed for fast access to the courts without assistance of counsel and even without the cost of a filing

fee charged at the time of the filing. The Act requires a hearing within ten days of the petition's filing, and the court, at the conclusion of the hearing, may grant a protective order. However, as states in 12 O.S. Supp. 1993 § 60.4(H), "[n]o order. . . shall in any manner affect title to real property. . . or otherwise purport to determine the issues between the parties as to. . .division of property or any other like relief . . ." (Emphasis added.) The trial court's order, consistent with the statute, did not in any way affect any property of the parties, real or personal.

We are aware that the issuance of a preliminary emergency ex parte order can constitute a temporary inconvenience to the defendant by its sudden and immediate severance of access to defendant's personalty needed for daily living, including items of clothing, necessities and records until: (1) the process can accommodate the parties; (2) the parties can agree via counsel or intermediaries to an access to personalty; (3) the parties resolve their differences; or (4) a court appearance and issuance of a permanent protective order. However, the deficiencies in the Act, while perhaps temporarily incapacitating the actions of defendant, do not constitute such a serious flaw as to make the statute infirm.

These deficiencies, while disruptive, are those which should be addressed by the legislature, not this court.

Defendant first asserts he was denied due process due to lack of discovery. The record shows this allegation to be without merit. "The due process guarantee is intended to protect an individual against arbitrary acts of the government." Marquette v. Marquette, 686 P.2d 990, 995 (Okla. Ct. App. 1984). The main factors to be considered in evaluating due process are the private interests affected by the government action, the risk of erroneous deprivation of these interests, the value of additional safeguards, and the governmental interests involved. Mathews v. Eldridge, 424 U.S. 319 (1976).

There are no governmental interests which impinge upon defendant's procedural safeguards in such a way as to deprive him of any private interests in the issuance of a permanent order. The Act's provisions are triggered by an individual protesting the act(s) of another to obtain protection from abuse. Defendant's private property interests affected by the process, while perhaps onerous on a temporary basis, are of such a nature as to be readily capable of resolution of the alleged abuse. However, this temporary

restriction of physical access does not in any way impinge upon or detract from procedural safeguards available to defendant.

The record reveals that extensive procedural safeguards were available to and utilized by defendant.[1] It appears from the record that defendant's principal complaint was his inability to obtain a court-mandated mental examination of plaintiff. The plaintiff's mental state in domestic abuse proceedings has no bearing upon defendant's alleged actions of abuse. Clearly, here the single matter to be litigated was: did abuse occur? The record establishes plainly that it did. In view of the record, it is clear defendant's allegations of due process denial have no basis.

Defendant's second allegation concerns a multi-pronged argument. He first asserts error in denial to him of a jury trial. With respect to the right to a jury trial, a protective order as provided for in the Protection From Domestic Abuse Act is equitable in nature and there is therefore no right to a jury trial in such a matter. Marquette v. Marquette, 686 P.2d 990 (Okla. Ct. App. 1984); see also Butcher v. McGinn, 706 P.2d 878 (Okla.

---

[1] The discovery used by defendant was, without delineating it, extensive and even approaching the point of being oppressive.

1985). He secondly asserts denial of equal protection. This argument must also fail as a proceeding for a protective order under the Protection From Domestic Abuse Act is brought by the individual victim of abuse. The State is not a party. Moreover, the defendant is not charged with a public offense when a protective order is sought. The remedy of a protective order is civil and not criminal. See Marquette, 686 P.2d at 993. He thirdly alleges the evidentiary standards used by the trial court were flawed. The defendant is aware the policy of the Act is to ensure speedy protection of domestic violence victims. The enhanced burden of proof standard of clear and convincing evidence is urged by the defendant, as used in ordinary suits for injunction, could hinder this objective. The lesser standard is more suitable for the objectives of the Act, and, the trial court did not err in applying the "preponderance of evidence" test. Finally in this multi-pronged assertion of error, defendant's argument that plaintiff should be required to show that she is in danger of violence or abuse is wholly without merit, as it totally ignores the language and purposes of the Act.

Defendant's third allegation of error addresses the

jurisdiction of a special judge to hear assigned domestic abuse matters. This premised error is grounded upon the specious argument that the parties were "roommates." This argument, without more, is entirely groundless and without merit. To seriously assert, particularly in today's society -- that parties living together and sharing a house do not fall into the sphere of domestic relations as contemplated by the Act strains credibility.

Defendant's fourth allegation concerns the asserted error in allowing an expert witness to testify on abusive relations for the benefit of the court. The admission of this testimony was not error. See 12 O.S. 1991 §2702. This witness' testimony was of a general nature to assist the trial court in understanding the evidence concerning abusive relationships. The witness did not examine either party and did not testify as to the character of either party. Furthermore, the witness did not intimate either party took an action in conformity with a given trait. Moreover, the witness did not affect the overall findings of the court supported by the record -- defendant did physically abuse plaintiff! Defendant's fourth allegation is also without merit.

Defendant's final argument of error is that the trial court

abused its discretion. Defendant erroneously argues that the trial court, before it can enter an order, must determine the necessity for a "cessation of domestic abuse," arguing this implies abuse of an ongoing nature. All that is required for entry of the order is for the court to have found the existence of abuse which it here did. Thereafter, its order directs cessation or finality of the act subject to penalties.

The decision of the trial court is affirmed in all respects. The appeal is determined to be without merit and is remanded for further proceedings to assess appellate attorney fees against defendant under 20 O.S. 1991 §15.1 and State ex rel. Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979).

REIF, C.J. and TAYLOR, J. (sitting by designation), concur.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, January 18, 1995

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

81,706 Kelly A. Sennholz v. Vernon Dale Ellis, Jr.

Certiorari denied; appellee's motion for appellate-related attorney fees denied.

VOTE ON DENIAL OF CERTIORARI:

CONCUR: Wilson, C.J., Hodges, Lavender, Hargrave, Summers, Watt, JJ.

CONCUR IN PART; DISSENT IN PART: Kauger, V.C.J., Opala, J.

VOTE ON DENIAL OF APPELLEE'S MOTION FOR ADDITIONAL APPELLATE-RELATED ATTORNEY FEES:

All Justices concur.

ALMA WILSON
CHIEF JUSTICE

Okla. Stat. tit. 22 § 60.1. Definitions

As used in Section 60 et seq. of this title and in Domestic Abuse Reporting Act, Sections 40.5 and 40.6 of this title and Section 150.12B of Title 74 of the Oklahoma Statutes:

1. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age sixteen (16) or seventeen(17) years against another adult, emancipated minor or minor child who are family or household members;

2. "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor sixteen (16) years of age or older, with the intent of placing the person in reasonable fear or death or great bodily injury.

3. "Harassment" means a knowing and willful course or pattern of conduct by an adult, emancipated minor, or minor sixteen years of age or older, directed at a specific person which seriously alarms or annoys the persons, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable persons to suffer substantial emotional distress, and must actually cause substantial distress to the person.

"Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes; and

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped.

Laws 1982, c. 255, §2. Laws 1986, c. 197, § 1, eff. Nov. 1, 1986; Laws 1991, c. 112, § 2, eff. Sept. 1, 1991; Laws 1992, c. 42, eff. Sept. 1, 1992.

Okla. Stat. tit. 22, §60.4. Service of process--Ex parte orders--Hearing--Protective orders--Period of relief

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Ex parte orders

shall be give priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;

2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;

3. An order to the defendant not to threaten the victim;

4. An order to the defendant to cease stalking the victim;

5. An order to the defendant to cease harassment of the victim;

6. An order to the defendant to leave the residence;

7. An order awarding attorney fees; and

8. An order awarding court costs.

E. After notice and hearing, protective orders authorized by this section may require the plaintiff or the defendant or both to undergo treatment or participate in the counseling services necessary to bring about cessation of domestic abuse against the victim. Either party or both may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by a peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace, as defined by Section 99 of Title 21 of the Oklahoma Statutes.

G. Any protective order issued pursuant to subsection C of this section shall not be for a fixed period but shall be continuous until modified or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant.

H. No order issued under the Protection from Domestic

Abuse Act, Section 60 et seq. of this title, shall in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation, child support or division of property or any other like relief obtainable under Sections 101 et seq. of Title 43 of the Oklahoma Statutes.

Laws 1982, c. 255, § 5. Laws 1983, c. 290, §3, eff. Nov. 1, 1983; Laws 1987, c. 174, § 1, operative July 1, 1987; Laws 1992, c. 42, § 4, eff. Sept. 1, 1992; Laws 1992, c. 379, § 1, eff. Sept. 1, 1992.

Okla. Stat. tit. 22, § 60.5. Copies of ex parte or final protective orders to be sent to appropriate law enforcement agencies

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

Laws 1982, c. 255, § 6. Laws 1983, c. 290, § 4, eff. Nov. 1, 1983.

Okla. Stat. tit. 22, § 60.6. Violation of ex parte or final protective order--Penalty

A. Except as otherwise provided by this section any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both.

B. Any person who after a previous conviction of a violation of a protective order is convicted of a second or subsequent offense pursuant to the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail of not less than ten (10) days and not more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine of not less than Five Hundred Dollars ($500.00) and not more than One Thousand Dollars ($1,000.00).

C. 1. Any person who has been served with an ex parte or final protective order who violates said protective order and

without justifiable excuse causes physical injury or physical impairment to the plaintiff or to any other person name in said protective order shall upon conviction be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than ten (10) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00).

2. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

3. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

D. The minimum sentence of imprisonment issued pursuant to the provisions of subsections B and C of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

E. In addition to any other penalty specified by this section, the court may require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim.

F. Ex parte and final protective orders shall include notice of these penalties.

Laws 1982, c. 255, § 7. Laws 1983, c. 290, § 5, eff. Nov. 1, 1983; Laws 1988, c. 249, § 1, emerg. eff. June 27, 1988; Laws 1992, c. 42, § 4, eff. Sept. 1, 1992.

Okla. Stat. tit. 12, §2001. Scope of the Oklahoma Pleading Code

Scope of the Oklahoma Pleading Code

The Oklahoma Pleading Code[1] governs the procedure in the district courts of Oklahoma in all suits of a civil nature whether cognizable as cases at law or in equity except where a statute specifies a different procedure. It shall be construed to secure the

---

[1] Section 2001 et seq. of this title.

just, speedy, and inexpensive determination of every action. The provisions of Sections 1[2] through 2027 of this title may be cited as the "Oklahoma Pleading Code". Section captions are part of this act.

Laws 1984, c. 164, § 1, eff. Nov. 1, 1984. Laws 1985, c. 277, § 2, eff. Nov. 1, 1985.

Okla. Stat. tit. 12 § 2002. One form of action

One Form of Action

There shall be one form of action to be known as "civil action".

Laws 1984, c. 164, § 2, eff. Nov. 1, 1984.

Okla. Stat. tit. 12, § 2404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

A. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

---

[2] Should probably read "2001".

1. Evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same;

2. Evidence of a pertinent trail of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor; or

3. Evidence of the character of a witness, as provided in Sections 2607, 2608 and 2609 of this Code.

B. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Laws 1978, c. 2865, § 405, eff. Oct. 1, 1978. Laws 1991, c. 62, § 1, eff. Sept. 1, 1991.

Okla. Stat. tit. 12, § 3225. Construction

The Discovery Code[1] shall be liberally constructed to provide the just, speedy and inexpensive determination of every action. Laws 1982, c. 198, § 2. Renumbered from § 3202 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

Okla. Stat. tit. 12, § 3230. Depositions Upon Oral Examination

A. WHEN DEPOSITIONS MAY BE TAKEN

1. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, shall be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of the summons and petition upon any defendant provided that leave is not required:

a. If a defendant has served a notice of taking deposition or otherwise sought discovery; or

---

[1] Section 3224 et seq. of this title.

b. If a special notice is give as provided in paragraph 2 of subsection B of this section.

The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

2. Unless otherwise agreed, a deposition upon oral examination may be taken only between the hours of 8:00 a.m. and 5:00 p.m. on a day other than a Saturday or Sunday and on a date other than a holiday designated in Section 82.1 of Title 25 of the Oklahoma Statutes. . . .

Okla. Stat. tit. 12, § 3233. Interrogatories to Parties

A. AVAILABILITY; PROCEDURES FOR USE. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to that party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action or upon any other party with the

summons and petition or after service of the summons and petition on that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. . . . The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of interrogatories, except that a defendant may serve answers or objections to interrogatories within forty-five (45) days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. . . .

B. SCOPE; USE AT TRIAL. Interrogatories may relate to any matters which can be inquired into under subsection B of Section 3226 of this title, and the answers may be used to the extent permitted by the Oklahoma Evidence Code as set forth in Sections 3101 et seq. of this title.

An interrogatory otherwise proper is not necessarily objectionable because an answer to the interrogatory involves an opinion or contention that related to fact or the application of law to fact. The court may order that such an interrogatory need not

be answered until after designated discovery has been completed or until a pretrial conference or other later time. . . .

Laws 1982, c. 198, § 10. Laws 1983, c. 142, § 1, eff. Nov. 1, 1983; Laws 1989, c. 129, § 9, eff. Nov. 1, 1989. Renumbered from § 3210 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

Okla. Stat. tit. 12, § 3234. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

A. SCOPE. Any party may serve on any other party a request:

1. To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents including, but not limited to, writings, drawings, graphs, charts, photographs, motion picture films, phonograph records, tape and video recordings, records and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable from, or to inspect and copy, test or sample any tangible things which constitute or contain matters within the scope

of subsection B of Section 3226 of this title and which are in the possession, custody or control of the party upon whom the request is served; or . . . .

B. PROCEDURE. The request to produce or permit inspection or copying may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with the summons and petition or after service of the summons and petition upon that party. The request shall set forth and describe with reasonable particularity the items to be inspected either by individual item or by category. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts.

The party, upon whom the request is served, shall serve a written response within thirty (30) days after the service of the request, except that a defendant may serve a response within forty-five (45) says after service of the summons and petition upon that defendant. . . .

Laws, 1982, c. 198, § 11. Laws 1989, c. 129, § 10, eff. Nov. 1, 1989. Renumbered from § 3211 by Laws 1989, c. 129, § 14, eff. Nov. 1, 1989.

Okla. Stat. tit. 12, § 3235. Physical and Mental Examination of Persons

A. SCOPE WHEN ELEMENT OF CLAIM OR DEFENSE. When the physical, including the blood group, or mental condition of a party or of a person in custody or under the legal control of a party, is in controversy in any proceeding in which the person relies upon that condition as an element of his claim or defense, an adverse party may take a physical or mental examination of such person.

B. PROCEDURE WHEN ELEMENT OF CLAIM OR DEFENSE. The party desiring to take the physical or mental examination of another party or of a person in custody or control of another party within the scope of subsection A of this section shall serve his request upon the person to be examined and all other parties. The request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

No request shall be served until thirty (30) days after service of summons and petition upon the defendant. The request shall set a time for the examination not less than five (5) days after service

of the notice.

If the party or person in custody or control of the party who is to be examined objects to the physical or mental examination then he shall file a motion objecting to the examination and setting out the reasons why his mental or physical condition is not in controversy of such person may apply for a protective order under the provisions of subsection C of Section 3226 of this title. The burden of proof is upon the person objecting to the examination or requesting a protective order. The court may set the conditions for examination or refuse to permit such examination if the mental or physical condition is not in controversy. If the party or the person in custody or control of the party refuses to obey the court order to submit to a physical or mental examination the court may impose those sanctions provided for in paragraph 4 of subsection A and paragraph 2 of subsection B of Section 3237 of this title.

If the motion is granted to prohibit the examination, the court may impose those sanctions provided for in paragraph 4 of subsection A of Section 3237 of this title upon the party requesting the examination.

C. ORDER FOR EXAMINATION. When the physical,

including the blood group, or mental condition of a party, or a person in custody or under the legal control of a party, is in controversy but does not meed the conditions set forth in subsection A of this section, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for such examination the agent, employee or person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

D. PHYSICIAN PRESENT. The physician of the person to be examined may be present at the examination.

E. REPORT OF EXAMINING PHYSICIAN.

1. If requested by the party or the person examined under this section, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions together with the like reports of

all earlier examinations of the same condition. After delivery, the party causing the examination to be entitled upon request to receive from the party or person against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is able to obtain it. The court on motion may enter an order against a party requiring delivery of a report on such terms as are just. If a physician fails or refuses to make a report the court may exclude his testimony if offered at the trial.

2. If the physician or psychotherapist-patient privilege has not already been waived as provided in the Oklahoma Evidence Code[1] requesting and obtaining a report of the examination made or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same physical or mental condition. . . .

---

[1] Section 2101 et seq. of this title.

Laws 1982, c. 198, § 12. Laws 1989, c. 129, § 11, eff. Nov. 1, 1989. Renumbered from § 3212 by Laws 1989, c. 129, § 14 eff. Nov. 1, 1989.

Okla. Stat. tit. 12, Ch. 2, App.1, Rule 5. Pretrial Proceedings

A. Docket. A pretrial conference shall be held in all civil actions except:

1. where the defendant is in default; or,

2. where the defendant has waived his right to appear or plead; or,

3. in an action for the recovery of money or personal property where the amount or value in controversy is less than $5,000.00; or,

4. in actions for forcible entry and detainer where a jury has been waived,

5. actions under the small claims procedure.

The judge is not required to hold pretrial conference in cases where jury has been waived but he may do so. A judge may hold more than one pretrial conference in any case, or he may excuse a case from the pretrial docket.

B. Notice. At least twenty (20) days' notice of the setting of a case for an initial pretrial conference shall be given to the parties and to the attorneys of record by the court clerk.

C. Scheduling. As soon as any civil case is at issue, the Court may schedule any conference it deems appropriate . . . .

18 U.S.C. § 922. Unlawful acts.

(a) It shall be unlawful-- . . .

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person-- . . .

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person has the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

28 U.S.C. §1257(a). State courts; certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

UNITED STATES CONSTITUTION. AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . . . .